

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

ZIH CORP.,)	
)	
Plaintiff,)	Civil Action No. 03-CV-12358-DPW
)	(Alexander, M.J.)
v.)	
)	
PAXAR CORPORATION,)	
)	
Defendant.)	
)	

PAXAR CORP.'S STATUS REPORT REGARDING OHIO LITIGATION

Pursuant to the Court's Order of December 2, 2004, Defendant Paxar Corporation reports the status of the parallel litigation currently pending before Judge Rice in the Southern District of Ohio. There are two cases pending in Ohio, both of which involve Paxar Americas, Inc., a subsidiary of Paxar Corp. Paxar Americas is not a party to the Boston litigation. The two Ohio litigations are: (1) *Paxar Americas, Inc. v. ZIH et al*, Civil Action No. C-3-03-142, filed on April 23, 2003 ("the first Ohio litigation"); and (2) *Paxar Americas, Inc. v. ZIH et al*, Civil Action No. C-3-03-417, filed on November 25, 2003 ("the second Ohio litigation"). For clarification, this litigation, *ZIH Corp. v. Paxar Corporation*, Civil Action No. 03-CV-12358DPW, shall be hereinafter referred to as "the Boston litigation."

I. RELATIONSHIP OF THE OHIO AND BOSTON CASES

In the first Ohio litigation, Paxar Americas alleges that approximately fifty ZIH *et al* products infringe seven of Paxar Americas' patents including U.S. Patent No. 5,833,800 ("the 800 patent"). Paxar Corp.'s defense in this Boston litigation is based, in part, on the contention that, if the two patents involved in the Boston litigation are construed to cover the Sierra Sport 2 printer (the accused product here), they are invalid in view of the prior 800 patent. *See* Paxar Corp.'s Response to ZIH's Response to the Court's Order, filed on February 2, 2004.

II. STATUS OF THE FIRST OHIO LITIGATION, C.A. NO. C-3-03-142

What follows is a synopsis of major events that have transpired in the first Ohio litigation.

<p style="text-align: center;"><i>Paxar Americas, Inc. v. ZIH et al</i>, Civil Action No. C-3-03-142 (The First Ohio Litigation)</p>
<p>Protective Order Entered. There was a dispute over the Protective Order in which ZIH attempted to preclude certain Paxar counsel from accessing confidential documents. The Ohio Court entered a Protective Order on April 28, 2004, allowing all Paxar counsel access to the documents. According to the Ohio Court, the Protective Order “shall govern all actions pending between the parties in the United States.”</p>
<p>Claim Construction Hearing Completed. On July 15, 2004, the Ohio Court heard oral arguments regarding the construction of the claims of the patents-in-suit, including the 800 patent. The parties are presently awaiting the Court’s decision.</p>
<p>Discovery Ongoing. The parties are currently involved in discovery, with fact discovery presently set to close on May 3, 2005. In the first Ohio litigation, ZIH requested, and Paxar Americas produced, many documents relating to the Sierra Sport 2 printer, the accused product in this Boston litigation. In response to a subpoena served by ZIH in the <i>Boston</i> litigation, Paxar Americas designated over 18,000 documents already produced by it in the first Ohio litigation. These documents were produced pursuant to the Ohio Protective Order.</p> <p>Paxar Americas has been working hard to obtain discovery from ZIH. The parties are engaged in weekly meet and confers. For example, in October 2004, after months of negotiations, ZIH finally answered an interrogatory served on them in September 2003.</p> <p>Depositions and expert discovery have been delayed because ZIH has still not produced basic documents regarding the accused products (e.g., certain schematics). Paxar Americas served a number of deposition notices as early as October 2004; however, to date, ZIH has not made any of its witnesses available. The first depositions in this case are presently scheduled for January 2005.</p> <p>ZIH recently issued a 30(b)(6) notice relating to products using the invention in the 800 patent (e.g., the Sierra Sport 2 printer).</p>
<p>Motion to Amend. In May and October 2004, Paxar moved to amend its Complaint in the first Ohio action to add two recently-issued patents. These patents are related to the 800 patent and cover the Sierra Sport 2 printer.</p>
<p>Trial. Trial is presently scheduled for October 2005.</p>

III. STATUS OF THE SECOND OHIO LITIGATION, C.A. NO. C-3-03-417

In the second Ohio litigation, Paxar Americas filed a declaratory judgment action alleging that the two patents at issue in the Boston litigation are not infringed and are invalid. What follows is a synopsis of major events that have transpired in that litigation.

Paxar Americas, Inc. v. ZIH et al, Civil Action No. C-3-03-417
(The Second Ohio Litigation)

Case Stayed Pursuant to Parties' Stipulation. Paxar Americas and ZIH apprised the Ohio Court of the pending Motion to Transfer in the Boston litigation. The Ohio Court granted the parties' stipulated motion to stay the second Ohio litigation pending this Court's determination of Paxar Corp.'s transfer motion. According to the parties' stipulation, if Paxar Corp.'s motion to transfer is granted, the transferred Boston litigation would be consolidated with the second Ohio litigation in Ohio. Alternatively, if the motion is not granted, the second Ohio litigation would be transferred to Boston for consolidation with the Boston litigation.

Motion to Strike. Before the case was stayed, Paxar Americas filed a Motion to Strike aspects of ZIH's Answer to Paxar's Complaint. ZIH's Opposition to that Motion would be due once the stay is lifted.

Date: December 13, 2004

Respectfully Submitted,

/s/ John F. Ward

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